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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR     | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|--------------------------|---------------------|------------------|
| 09/325,963  | 06/04/1999  | BONNIE WEISKOPF ALBRECHT | 54664USA4A          | 3500             |
| 32692   | 7590        | 10/15/2003               | EXAMINER            |                  |
| 3M INNOVATIVE PROPERTIES COMPANY<br>PO BOX 33427<br>ST. PAUL, MN 55133-3427 |             |                          | CHANG, VICTOR S     |                  |
|   |             |                          | ART UNIT            | PAPER NUMBER     |
|   |             |                          | 1771                |                  |

DATE MAILED: 10/15/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                        |                     |  |
|------------------------------|------------------------|---------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b> |  |
|                              | 09/325,963             | ALBRECHT ET AL.     |  |
|                              | <b>Examiner</b>        | <b>Art Unit</b>     |  |
|                              | Victor S Chang         | 1771                |  |

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 18 August 2003.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-16, 18-24, 29-33 and 35 is/are pending in the application.
- 4a) Of the above claim(s) 1-12 and 18-24 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 13-16, 29-33 and 35 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All   b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                             | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____                                    |

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### DETAILED ACTION

1. The Examiner has carefully considered Applicant's Remarks filed on 8/18/2003.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
3. Rejections not maintained are withdrawn. In particular, Applicant's argument that "Lindquist does not teach or describe rupturing or enlarging by stretching foam cells" is persuasive. As such, the rejection under 35 U.S.C. 102(b) is withdrawn. However, the rejection under 35 U.S.C. 103(a) is still deemed to be proper.

### *Response to Amendment*

4. Claims 13-15, 31 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lindquist et al. (US 3665918), substantially for the reasons set forth in section 3 of Paper No. 17, together with the following additional observations.

With respect to Applicants' response arguing that "Office action does not identify anything in the cited references that would have provided a desire to increase the permeability of Lindquist's articles much less a desire to do so by stretching them" (Remarks, page 3, first full paragraph), the Examiner reiterates (see Paper No. 14, page 3) that "Lindquist is directed to breathable pressure sensitive adhesive tapes". As such, it would have been obvious to one of ordinary skill in the art to rupture the cellular membranes in Lindquist's foam, motivated by the desire to improve its permeability, i.e., its breathability. Additionally, it should be noted that one cannot show non-obviousness

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by attacking references individually where the rejections are based on combinations of references.

5. Claims 13-16 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walther (US 5905097), substantially for the reasons set forth in section 4 of Paper No. 17, together with the following additional observations.

With respect to Applicants' response arguing that "Office action offers no justification for why one skilled in the art would have been motivated to increase the permeability of the Walter foam by rupturing or enlarging the foam cells." (Remarks, page 4, bottom paragraph), the Examiner repeats (see Paper No. 14, page 7) that "Walther is directed to the production of breathable foams". As such, it would have been obvious to one of ordinary skill in the art to rupture the cellular membranes in Walther's foam, motivated by the desire to improve its permeability, i.e., its breathability. Additionally, it should be noted that one cannot show non-obviousness by attacking references individually where the rejections are based on combinations of references.

6. Claims 29, 30, 32 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lindquist (US 3665918) in view of Pufahl (US 4169184), substantially for the reasons set forth in section 5 of Paper No. 17, together with the following additional observations.

With respect to Applicants' response arguing that "Lindquist does not teach or suggest rupturing or enlarging foam cells by stretching the article" (Remarks, page 5, fourth full paragraph), the Examiner reiterates that "Lindquist is directed to breathable pressure sensitive adhesive tapes". As such, it would have been obvious to one of

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ordinary skill in the art to rupture the cellular membranes in Lindquist's foam, motivated by the desire to improve its permeability, i.e., its breathability. Additionally, it should be noted that one cannot show non-obviousness by attacking references individually where the rejections are based on combinations of references.

With respect to claim 32, Applicants' argument that the "the Office action now states that the Examiner believes that a pressure sensitive tape or sheet comprising a multilayer backing which contains a foamed core layer is old and well known, and that applying an outer protective release layer on a pressure sensitive layer is conventional and common knowledge. Other than citing generally to Pufahl as showing an outer protective layer, the Office action fails to demonstrate that all of these features were in the prior art" (Remarks, pages 5-6, bridging paragraph) is not persuasive. The Examiner repeats (see Paper No. 17, page 4) that the prior art rejection of record is still deemed to be valid, and it is believed that pressure sensitive tape or sheet comprising a multilayer backing which contains a foamed core layer is also old and well known. Further, the Examiner repeats (see Paper No. 14, page 10) that Pufahl's adhesive tape comprising<sup>es</sup> a flexible, open-cell polyurethane foam having pressure sensitive adhesives applied to both surfaces of the foam, i.e., an ABA structure. It should be noted that since each of the A layer of Pufahl's ABA structure is a pressure sensitive layer, it inherently encompasses the structure of claim 32, which would require one of the A layers to be two PSA layers on one side coated upon each other, and essentially forming one unitary layer.

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor S Chang whose telephone number is 703-605-4296. The examiner can normally be reached on 8:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel H Morris can be reached on 703-308-2414. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

VSC

DANIEL ZIRKER  
PRIMARY EXAMINER  
GROUP 1900-  
1700

*Daniel Zinker*